uttered what can only be considered a threat when he made the insubordinate remark to the Master on being told to stand-by, after the signal had been ignored.

In the case of Cho Sek Yuk, for the sentence of 2 months R.I. I substitute the maximum sentence of imprisonment for 4 weeks. In the case of the other appellants, for the sentence of 6 weeks R.I. I substitute a sentence of 12 days' imprisonment, sentence to run from to-day's date.

In the case of all the appellants, the appeals against conviction are dismissed.

Order Accordingly.

RE A. PENHAS DECEASED.

[Orig. Civil Juris. (Murray-Aynsley, C.J.) Jan. 30, 1947]

Proof of death—presumption of death.

On an ordinary petition for Letters of Administration where the death of the intestate is put in issue, the Court can presume that the death took place on or after a given date.

G. E. N. Oehlers for Plaintiff on issue.

John Laycock for Defendant on issue.

In this case one Tan Soo Eng filed a Petition for Letters of Administration of the Estate of Abraham Penhas. A Caveat was filed by Isaac Penhas, a brother of the said Abraham Penhas, and later an Order was made for the trial of the following issues namely "whether the abovenamed Abraham Penhas who resided in Singapore is dead and if so when he died." Tan Soo Eng was the Plaintiff on the said issues and Isaac Penhas was the Defendant on the said issues.

It was admitted by the Defendant that Abraham Penhas was arrested by the Japanese on the 3rd March 1942 and that he was imprisoned by the Japanese and also that subsequent to some date about the 10th March 1942 no communication had ever been received from him by his relatives.

The Plaintiff called her mother Sim Peng Neo as a witness. This witness gave evidence to the effect that following information received she had gone to the Detective Police Station, Robinson Road, Singapore, on the 17th day of the 1st Chinese Moon in the year 1942, that is the 3rd March 1942, and that she had then seen Abraham Penhas there. Following further information she again went to the Detective Police Station, Robinson Road, on the 22nd day of the 1st Chinese Moon, that is the 8th March 1942 when she saw and recognised his dead body. This evidence was uncorroborated.

The Defendant produced two wholly independent witnesses who testified that they shared a prison cell with Abraham Penhas at the Sailors Home, Anson Road (not the Detective Police Station) from the 5th to the 10th March 1942.

Murray-Aynsley, C. J.:—Delivering an Oral Judgment said that it was almost inconceivable that if Abraham Penhas was still alive he would not have communicated with his friends and relatives before that time. He held that Abraham Penhas had died on or since the 10th March, 1942.

Order Accordingly.

MALAYAN UNION REPORTS.

PUBLIC PROSECUTOR v. ENG LIM AND TEN OTHERS.

[Criminal Revision (Laville, J.) December 14, 1946]

Common Gaming House Enactment, Section 6, 16 and 17—When presumption under Section 16 will arise—Where no presumption arises the prosecution must show aliunde that place is a common gaming house —Presumption under Section 6 (ii) of the Enactment—Revision—Criminal Procedure Code Chapter XXXI.

In this case eight of the accused were convicted of the offence of gaming in a common gaming house and fined $25/- each. They applied to the Supreme Court for revision under Chapter XXXI of the Criminal Procedure Code. The prosecution claimed that as they had entered the house under the provisions of Section 16 of the Common Gaming House Enactment and had found there instruments for gaming the presumption arose under Section 17 of the Enactment that the room was a common gaming house, and the presumption also arose that the occupants were gaming. The officer-in-charge Police District who was in charge of the raiding party in this case stated in his evidence that he was a Senior Police Officer but he did not give evidence as to his rank or as to his being gazetted as a Senior Police Officer under the Common Gaming House Enactment. There was further evidence that the officer-in-charge Police District acted on information received but there was no evidence that such information was on oath and in writing, nor was there any evidence given that it was his personally acquired knowledge of facts and circumstances that satisfied him that there were sufficient grounds for a search or what these facts or circumstances were, or that the time factor was one to be considered, so as to justify him in entry under Section 16. The prosecution evidence was that on entry the Police found the accused gambling at Pai Kau; the room was furnished only with a table and chairs round which the accused were grouped and on the table was Pai Kau, dice, other implements and 180 counters; near the table were seated one of the accused with a further supply of counters and some money.

Held, (1) that the entry in this case did not comply with the provisions of Section 16 of the Common Gaming House Enactment and therefore no presumption under Section 16 of the Enactment could arise therefrom;

(2) that there was evidence **aliunde** that the room was a common gaming house and that the Magistrate was right in holding that the place was a common gaming house;

(3) that once it was established that the place was a Common gaming House Section 6 (ii) of the Enactment shifted the onus on to the accused to rebut the presumption that they were gaming and as they had failed to do so, they were rightly convicted by the Magistrate.

CRIMINAL REVISION.

Laville, J.:—In this case 8 of the accused were convicted of an offence of gaming in a common gaming house on 6.10.46 about 8.30 p.m. and fined $25/- each. The provisions of section 304 Criminal Procedure Code preclude an appeal in this case and the convicted men therefore apply for revision under Chap XXXI of the said Code.

The grounds set out are that both in law and fact the decision of the learned Magistrate was incorrect.

The prosecution story is that on 6.10.46 about 8.30 p.m. the Officer-in-Charge police district, Johore Bahru with other police officers raided No. 4 Jalan Siew Nam and found the gaming going on there in a room and seized money and chips and gaming instruments and arrested all the persons in the room of whom the 8 accused were some.

The prosecution claim that as they had entered the house under the provisions of section 16 Common Gaming House Enactment and had found there instruments for gaming the presumption arise under section 17 of the Enactment that the room was a common gaming house, and the presumption also arise that the occupants were gaming.

Neither of these presumptions had been rebutted by the 8 accused. It is settled law that the Common Gaming Houses Enactment being highly penal must be very strictly interpreted, especially where it overrides the ordinary rule that the onus of proof rests on the prosecution and imposes that onus on the defence. In this enactment before any presumption can be legally drawn in favour of the prosecution it must be proved that entering into the house has been made under the Enactment and not otherwise.

The mode of such entry is laid down in section 14 of the Enactment. It consists in entry by virtue of a search warrant issued by a Magistrate or a Senior Police Officer after (1) satisfactory written information on oath and (2) any further enquiry the issuing authority may require. The warrant must therefore on the face of it set out that it is issued after written information given on oath has satisfied the issuing authority.

Section 16 of the Enactment permits a Senior Police Officer or Magistrate to do what he may authorise other persons to do when he is competent to issue a warrant; that is primarily after satisfying himself by written information on oath. He may also exercise this power in 4 other circumstances (a) if within the previous 6 months the place to be entered has been used as a common gaming house and its user convicted thereof (b) if the place is a club or society room and he has reason to believe it is being used for habitual gaming (c) if he has personal knowledge of such facts and circumstances as satisfy him that they are sufficient grounds for a search under the relevant sections; (d) if to delay in order to reduce information to writing would defeat the object of the search.

In order to justify entry under section 16 a Magistrate or Senior Police Officer must prove they are competent to issue a warrant i.e. that they are acting on written information on oath, or that the conditions set out in 16 (a) (b) (c) or (d) exist. These conditions cannot be assumed. Reference to the appointment in the Government Gazette would suffice to show competence or to the record of conviction in case of 16 (a) or to Municipal records and evidence in case of 16 (b).

In the case of 16 (c) the personal knowledge of the Magistrate or Senior Officer takes the place of the sworn information and it must be proved that the knowledge was personally acquired and not come by through hearsay and report but through the actual investigation and personal efforts of the Magistrate or Senior Police Officer.

In the case of 16 (d) the Magistrate or Senior Police Officer must still act on information but if the time factor precludes its recording on oath he may act on it. Again this is a matter which must be proved by evidence.

In this case under review the Officer-in-Charge Police District who was in charge of the raiding party states he is a Senior Police Officer; he does not give evidence either as to his rank or as to being gazetted as a Senior Police Officer under the Gaming House Enactment. There seems to be no reason why this was not done.

There is evidence that the Officer-in-Charge Police District acted on information but it is nowhere recorded that such information was on oath and in writing, nor is any evidence given that it was his personally acquired knowledge of facts and circumstances that satisfied him that there was sufficient grounds for a search or what

these facts and circumstances were, or that the time factor was one to be considered, so as to justify him in entry under section 16. It would appear from his evidence as to chips being used that he received information by word of mouth from some other sources than himself.

In my opinion therefore this entry was not under the provisions of section 16 and therefore no presumption under section 16 of the Enactment arises therefrom.

It is however open to the prosecution to prove aliunde that the room at No. 4 Jalan Siew Nam was a Common Gaming House. If it is used once only for gaming and is open to the public it falls within the definition of a Common Gaming House. The prosecution evidence given by 2 Police Officers is that on entry they found the accused gambling at Pai Kau; the room was furnished only with a table and chairs round which accused were grouped; on the table was Pai Kow, dice, other implements and 180 counters; near the table was seated one of the accused with a further supply of counters and some money. As the learned Magistrate says there is no reason to doubt the evidence of the two Police Officers; the instruments on the table may be fairly taken to be gaming instruments; on this evidence the learned Magistrate held that the place was a Common Gaming House and in my view he held so correctly without any question of using a presumption.

Once it was established that the place was a Common Gaming House section 6 (ii) of the Enactment shifted the onus on to the accused to rebut the presumption that they were gaming. This, there is no doubt, they failed to do, and were rightly convicted by the Magistrate.

I certify therefore that no order is made by me on this application for revision and that the finding and sentence of the Magistrate shall stand.

No Order Made.

LOW YAT v. G. C. GRACE.

[Orig. Civil Juris. (Willan, C.J.) February 21, 1947]

Practice—Conditional Appearance—No provision for conditional appearance in the local law—1932 Rule 1 Sub-rules 12 and 21—Interpretation and General Clauses Enactment (Cap. 1), Section 33—Powers of Registrar under Section 7 (ii) (a) of the Federated Malay States Courts Enactment (Cap. 2).

In this case the plaintiff claimed damages against the defendant, an Assistant Commissioner of Police stationed at Kuala Lumpur. On the 30th day of December 1946, the Registrar granted the defendant leave to enter a conditional appearance in the suit on the ground that the defendant, in his affidavit supporting the application for leave to enter a conditional appearance, had stated that he was applying to the Court for an order that the suit be discharged and made void on the ground that the suit did not lie. Accordingly on the same day, the defendant entered a conditional appearance and then filed an application asking for an order that the plaint in this suit be discharged and made void on the ground that the suit did not lie and could not be maintained having regard to Section 3 of the Indemnity and Validating Ordinance, 1946. The plaintiff immediately applied for an order under 1932 Rule 1 that judgment should be entered in his favour on the ground that the local law does not provide for the entering of a conditional appearance and consequently the defendant had failed to enter any appearance. The two applications were listed for hearing on the same day. On the application by the defendant that the plaint in the suit be made void and discharged, counsel for the plaintiff took the preliminary objection that the defendant was not properly before the Court, because the local law does not provide for entering a conditional appearance.

Held, that the local law makes no provision for entering a conditional appearance and the preliminary objection that the defendant was not properly before the Court must be upheld.

Cases referred to :—

(1) *Joseph v. Len Hup & Co. and another* (1939) F.M.S.R.L. 70; (1940) M.L.J. 49.
(2) *Redditch Benefit Building Society v. Roberts* (1940) 1 A.E.R. 342.
(3) *Hussein v. Chanda Singh* (1935) F.M.S.L.R. 86; (1935) M.L.J. 262.
(4) *Davies v. Burton* 11 Q.B.D. 537.
(5) *Thomas v. Kelly* 13 A.C. 506.
(6) *Leonard v. Nachiappa Chetty* 4 F.M.S.L.R. 265.

SUMMONS IN CHAMBERS.

E. D. Shearn for the plaintiff.

A. J. Grattan-Bellew for the Attorney-General for the defendant.

Willan, C. J. :—In this case the plaintiff claims damages, on grounds which are not material to this judgment, against the defendant who is an Assistant Commissioner of Police stationed in Kuala Lumpur.

On the 30th day of December, 1946, the Registrar granted the defendant leave to enter a conditional appearance in this suit on the ground that the defendant, in his affidavit supporting the application for leave to enter a conditional appearance, stated that he was applying to the Court for an order that the suit be discharged and made void on the ground that such a suit does not lie.

Accordingly, on the same day i.e. the 30th day of December, 1946, the defendant entered a conditional